



CONSTITUENT ASSEMBLY OF PAKISTAN DEBATES

Monday, the 27th March, 1950

OFFICIAL REPORT

CONTENTS

| | Page |
|--|------|
| Presentation of Credentials and Signing of the Roll of Members | 1 |
| The Government of India (Fourth Amendment) Bill— <i>Introduced, considered and passed</i> | 1—9 |

Published by the Manager of Publications, Government of Pakistan, Karachi
Printed by the Manager, Governor-General's Press, Pakistan, Karachi
1950

THE CONSTITUENT ASSEMBLY OF PAKISTAN DEBATE

(Official Report of the Seventh Session of the Constituent Assembly of Pakistan)

Volume VII—1950

CONSTITUENT ASSEMBLY OF PAKISTAN

Monday, the 27th March, 1950

The Constituent Assembly of Pakistan met in the Assembly Chamber, Karachi, at Eleven of the Clock, being the First Day of the Seventh Session of the Constituent Assembly of Pakistan, Mr. President (The Honourable Mr. Tamizuddin Khan) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING THE ROLL OF MEMBERS

Mr. President: Honourable Members who have not already presented their credentials and signed the roll of Members may now do so.

Choudhury Moazzem Hossein (Lalmia) (East Bengal : Muslim)

Mr. Asadullah (East Bengal : Muslim)

THE GOVERNMENT OF INDIA (FOURTH AMENDMENT) BILL

The Honourable Mr. Ghulam Mohammed (East Bengal : Muslim) : Sir, I beg to introduce the Bill further to amend the Government of India Act, 1935 (insertion of new Section 140-A and amendment of the Seventh Schedule).

Sir, The House is aware that in 1948, by a special legislation,

Mr. President: You may speak on your next motion.

The Honourable Mr. Ghulam Mohammed : Yes, Sir.

Sir, I beg to move :

“That the Bill further to amend the Government of India Act, 1935 (insertion of new Section 140-A and amendment of Seventh Schedule) be taken into consideration.”

Sir, as the Honourable members are aware in 1948 owing to the then existing circumstances the item in the Seventh Schedule of the Government of India Act with regard to tax on the sale of goods, was transferred from the Provincial List to the Central List. The reasons for the transfer given at the time were that in view of the heavy expenditure on Defence and liabilities of the Central Government, this tax should be administered by the Centre, and the Centre should pay to the Provinces certain prescribed sums agreed to. It was also felt that apart from the financial needs, on general administrative considerations, a tax of this nature should better be administered by the Centre rather than

[The Honourable Mr. Ghulam Mohammed]

by the Provinces. It would not be relevant to go into that aspect of the question, but by our agreement a legislation was enacted on the basis of agreement reached between the Centre and the Provincial Governments. That legislation was passed for a period of two years which expires on the 31st of March, 1950.

Sir, while those two years have passed, the circumstances under which the legislation was passed continue to exist, if anything, in very much more accentuated form. The Central Government have consulted all the Provincial Governments and have obtained their consent to a further extension for a period of two years of tax on sale of goods being continued in the Central List rather than the Provincial List. The Provinces shall, however, continue to receive prescribed sums out of the net proceeds of sales tax.

As the House is aware, our Defence expenditure continues at a slightly higher level than in 1948, and for the next two years the other burdens of the Centre are not likely to abate. In these circumstances, and with the consent of the Provinces, it is proposed that the Government of India Act may be amended so that the Centre should continue to administer and realise the proceeds from sales tax on goods and pay to the provinces certain prescribed sums as laid down by the Governor General.

Sir, I move that this Bill be considered and passed.

Mr. President : Motion moved :

"That the Bill further to amend the Government of India Act, 1935 (insertion of new Section 140-A and amendment of Seventh Schedule) be taken into consideration."

Shri Dharendra Nath Datta (East Bengal : General) : Mr. President Sir, when this matter was being discussed earlier, it appeared to us that the consent was obtained from the Punjab, the North-West Frontier Province and Sind, but consent to that item was not obtained from the province of East Bengal. When, Sir, the voting on demand on tax on the sale of goods was being considered, it was postponed at the request of certain members of the Cabinet of the Eastern Bengal Government. But, Sir, the matter could not be discussed as the matter was subsequently guillotined. But, Sir,

The Honourable Mr. Ghulam Mohammed : On a point of order, Sir. I am sorry to disturb my Honourable friend, but I have said that the consent of the province in question has been received. When I say "all provinces", it includes East Bengal

Shri Dharendra Nath Datta : I do not know when the consent of the East Bengal Government was obtained. That is the position, Sir.

Mr. President : When was the consent taken ?

The Honourable Mr. Liaquat Ali Khan (East Bengal : Muslim) : Through me, Sir.

The Honourable Mr. Ghulam Mohammed : The matter was discussed between the Honourable the Prime Minister and the Government of East Bengal, when he visited Eastern Pakistan, and the consent of the East Bengal Government has been conveyed to us through the Honourable the Prime Minister.

Prof. Raj Kumar Chakraverty (East Bengal : General) : Mr. President, Sir, I rise to oppose the motion. The Bill relates to the amendment

of the Government of India Act, and to the omission and insertion of certain matters in its Seventh Schedule.

Sir, my objections to the Bill are two-fold : I rise to record my protest that we are no longer willing to be governed by the Government of India Act, 1935. I record my protest that we have been very slow in proceeding with the making of our constitution, and it is high time that the Government of India Act gave way.....

Dr. Mahmud Husain (East Bengal : Muslim) : Sir, how does it relate to the issue before us ?.....

Mr. President : Let me see. I cannot say as yet.

Prof. Raj Kumar Chakraverty : It is high time that we should have our own constitution and we should bid good-bye to the Government of India Act, 1935. The Government of India Act, 1935, which is sought to be amended has been said to be too wooden, too inelastic and ante-deluvian and it is regretted that we are still governed by the Government of India Act.

Should I go on, Sir ?

Mr. President : Yes, yes.

Prof. Raj Kumar Chakraverty : Sir, I for myself, cannot be a party to the continuance of the Government of India Act when it was high time that our new constitution had been made. This is my first objection. It is on principle.

Then, Sir, this subject, namely, the Proceeds of the Sales Tax, was a Provincial subject, and by the last amendment of the Government of India Act, this was made a Central subject. Sir, many of the important sources of income to the Provincial Government—I should say "some"—have been taken away by the Central Government. Today the position is that the Provincial Governments do not know where they stand so far as their revenue is concerned.

So far as the revenue is concerned, they are in a very uncertain position. They cannot go on within their plans, with their schemes or long-term arrangements, because they do not know what may happen tomorrow, specially when the Centre may take away any source of income from the provinces. Therefore, Sir, I submit that it is an encroachment upon the rights of the provinces, even though the provincial Governments, I understand, have given their consent to it. Sir, the proposal says that a certain amount of this tax should be given to the provinces. What that amount shall be, whether it is 1/3rd, half or any other fixed proportion, it has not been stated. It is left to the discretion of the Centre. During the debate that took place on the budget, during the last few days, the Honourable Mr. Abdul Hamid of East Bengal raised the question that the Centre should give more money for the introduction of free and compulsory education in the province of East Bengal. To that the Honourable Minister for Education replied that if he could get more money and more revenue he would be glad to make a subsidy to the provincial Government. This tax is one of the important sources of income of the provinces and that is being taken away by the Centre, and therefore, as a matter of principle, I object to it. If we had a constitution and if it was provided that this was a provincial subject, then we could have gone to the Supreme Court or the Federal Court and ask for an adjudication on the subject. But as the new constitution is not

[Prof. Rajkumar Chakraverty]

there, we are helpless. Though the East Bengal Government may have given their consent, yet as an humble citizen of East Bengal, I have every right to protest against this usurpation by the Central Government of some of the rights of the provinces. For these reasons I oppose the motion under consideration.

The Honourable Mr. Abdul Hamid (East Bengal : Muslim) : Sir, I raise my voice of protest against taking away of sales tax from the provinces, but in spite of all that has fallen from the lips of my Honourable friend, Mr. Chakraverty, I withdraw my opposition. Though I am very jealous in this matter, but I still hold the view that in times of emergency, the Centre must have every right to take away the revenues of the provinces and the Centre, at the same time, must be ready to help the provinces when they are found in difficulty. This sort of give-and-take must guide our policy and therefore, I for myself do not object to the taking of the sales tax from the provinces. I also agree that it is not very palatable to be ruled under the old Government of India Act. But because of circumstances over some of which this Assembly has no control, our constitution has been delayed. I also want that our constitution should be framed as early as possible. However unpalatable it is, India had to follow the Government of India Act for a considerable time—they began earlier and we have begun late—but every effort should be made to expedite the making of our constitution. Their complaint about our inability to have the constitution framed by now does not rest entirely with the Government, but it rests fully with the members of the Constituent Assembly. The complaint with regard to the delay is our own fault. I have nothing more to add.

Mr. Nur Ahmed (East Bengal : Muslim) : Sir, sales tax was a Provincial responsibility. By this amendment it is going to be made a central responsibility for two years. Sir, there are two opinions on this matter. The opinions of the traders of East Pakistan and West Pakistan differ widely on this subject. Traders of East Bengal are of the opinion that the sales tax should be restored to the province and I find that the traders of West Pakistan think that it should be continued to be a Central subject. Sir, I find elsewhere in India it has been made a Central subject. Of course, my personal view is that the Centre is in a better position to impose this sales tax on a uniform basis throughout Pakistan. Provinces may impose different rates of sales tax in different provinces and this may go against the industrial development of Pakistan. In my humble view it should be a Central responsibility for all time. But as the source of revenue of the provinces is very limited, they should be given sufficient portion of the sales tax proceeds. Sir, the East Bengal Government is very much handicapped for want of sufficient funds to cater to the amenities of millions of their people, who are very backward industrially, educationally, militarily and economically. In East Bengal the standard of living is very low. According to the census, even 2/3rd of the people are under-nourished and ill-fed. Therefore I would request the Government to pay a sufficient amount of this tax to the province of East Bengal. It is reported that last year, full quota was not paid to the province of East Bengal.

Sir, my second submission is that machinery for realisation of sales tax should be re-organised on an efficient basis so that there may not be any evasion of sales tax. At present our information is that sufficient portion of sales tax realised from consumers does not go to the Govern-

ment and some of the unscrupulous traders misappropriated it for their own benefit. I think the machinery should be more efficient so that there may not be any misappropriation of tax.

Sir, I again appeal to the Honourable Minister to consider the case of East Bengal. They have got a very limited source of income. They are going to abolish excise duty on liquor. It will be a loss of 50 lakhs to that Government. Other source of income, that is, land revenue, is also very limited, because permanent tenancy still prevails in that area. Sir, there is no other expanding source of income. This sales tax was the only expanding source to East Bengal. Sir, before partition, the East Bengal Government used to get 62½ per cent. of jute duty, but I understand, this ratio has been reduced to 50 per cent., and also the Government used to get 20 per cent. of income-tax. I understand nothing is paid out of the income-tax pool to the Government of East Bengal. I am one of those who think that there is no difference between the Centre and the provinces. I think that for all time it is desirable that the Centre and the provinces should work together in full co-operation and mutual amity, so that our dear Pakistan may develop rapidly and uniformly. In that view I am of the opinion that the Centre requires money for defence and there should be as many sources available to the Centre for having that money as possible. At the same time, I think the Centre should see that the provinces are also helped monetarily, so that they may develop their resources also and may improve the conditions of living of the millions of people living there. With these words I support the motion under consideration.

Moulavi Ebrahim Khan (East Bengal : Muslim) : Sir, as the question of taking up the sales tax by the Centre has been decided upon in agreement with the Cabinet of East Bengal after due consideration and discussion, I do not think I need say anything more on the subject. I would, however, like to invite the attention of the Honourable Minister in charge to one circumstance. Many of us have received as many as two telegrams and one letter from the Honorary Secretary, Muslim Chamber of Commerce, Dacca and another from the Honorary Secretary of the Federation of Commerce of Pakistan. These letters and telegrams complain that the administration of the Centre.....

Choudhury Moazzem Hossein (Lalmia) (East Bengal : Muslim) : We have also received a letter from the Secretary of the Parliamentary Party.

Moulavi Ebrahim Khan : My friend has got another letter from the Secretary of the Parliamentary Party. In all these letters and telegrams complaints have been made that the administration of Sales Tax in East Bengal at least has been done with great harshness and with little discretion. I do not say that all the complaints are correct nor do I say that they are without foundation. What I do say is that as the complaints come from persons of great importance and responsibility, the Honourable Minister will please take personal interest in this matter and see that the Department is administered with necessary efficiency and without any avoidable harshness.

The Honourable Mr. Ghulam Mohammed : Sir, the objections raised by Prof. Chakraverty were two-fold. One was that he does not like to be ruled by the Government of India Act. I suppose no one of us likes to be ruled by that Act, but, as was pointed out by the other speakers, till our new Constitution is framed, it is inevitable that there should be

[The Honourable Mr. Ghulam Mohammed]

some constitution, otherwise there will be a vacuum in the meanwhile. On the other hand, he has pointed out indirectly that there is delay in the framing of the constitution. Let me assure him, if any assurance is needed, that everything possible is being done to expedite the framing of the new constitution. The framing of the constitution is not an easy thing ; it is not merely sitting down in a political party and passing certain resolutions. It does require very detailed study and also the working of various Committees and Sub-committees. The Opposition is fully associated with the framing of the constitution and nobody knows better than the Leader of the Opposition what the difficulties and the delays are. They are inevitable and they are being surmounted as best as we can.

The second objection is rather interesting. He has the usual tale of woe that the Centre has taken away everything, has done this and that and that the provinces are left high and dry ; they do not know what to do ; they cannot plan ; they cannot develop because the Centre is constantly making inroads on their income. He painted a lurid picture ; but if he were to read the proceedings of this House and of the Constituent Assembly (Legislature) he would perhaps come to a different judgment. My Honourable friend Mr. Nur Ahmed also referred to that and I would like to take this opportunity to refer to relevant issues. I must take this opportunity to remove the misconception that is in the minds of the Honourable Members on this matter. It has been said that we have taken away the income-tax and we have taken away the estate duty, and all that was in the provincial orbit. I wish to remind the Honourable Members of one circumstance, namely, that there is nothing sacrosanct between the Provincial list and the Central list and the allocation of revenues between the Centre and the provinces. These allocations were settled under the Niemeyer Award many years ago under quite different set of circumstances, when India was one. With the partition the Centre was saddled with new responsibilities and with certain unforeseen responsibilities. Therefore, we had either to take the step of re-allocating the revenues or to make temporary arrangements with the consent of the provinces. We should meet the requirements of both the Centre and the provinces till such time as the new constitution laid down in the light of the allocation of functions between the Centre and the provinces what heads of revenue should be Central and what should be Provincial. That aspect of the question is being studied by the Committee and is being looked into. Pending their decision, a meeting of the Finance Ministers of Pakistan was held in Lahore as early as October, 1947, and it was addressed by the late Quaid-i-Azam. It was mutually agreed that income-tax out of the collections of which a part was given to the provinces by the Centre shall no longer be given to the provinces. Then, certain decisions about the sales tax were taken and they were all implemented with the consent of the provinces. Sir, when criticism is made on purely technical grounds, without going into the circumstances of the case and by attaching a great sanctity to the allocation that exists, I am afraid that criticism is not realistic because it is based on theories and is not relevant to the actual circumstances prevailing in the country. Then, Sir, Mr. Chakraverty said that the provinces feel that the Centre may take over any other sources of tax. The actual facts are that the plans of the provinces for development come before the Development Board, and the provinces have not yet been able to spend anything out of the money that has been allotted to them for development purposes. Instead of being impoverished, they are unable to spend the amount that is allotted to them in one year.

Shri Dhirendra Nath Datta : That shows the inefficiency of the Provincial Governments.

The Honourable Mr. Ghulam Mohammed : I am not responsible for the provinces.

Prof. Raj Kumar Chakraverty : Is that true of East Bengal also ?

The Honourable Mr. Ghulam Mohammed : Yes, Sir. Honourable Members should realise that there are various schemes for development. When you actually start to undertake a scheme and provide one hundred and one things that are required to execute it, it takes time. I do not say that there is inefficiency on the part of the provinces. It may be due to lack of experience or lack of foresight or lack of availability of man-power and materials. There may be one hundred and one kinds of difficulties for which the provinces cannot be held responsible. As they are now gaining experience, they are getting better. It is no use condemning either the Central Government or the Provincial Governments on that point. But they are actually getting money for developments which is more than they can spend.

Then, Sir, Mr. Nur Ahmed has raised the question of paying the Provinces certain sums of money on account of the proceeds of the Sales Tax. Sir, the position is that the Provinces are receiving under the new scheme—they have continued to receive for the last two years and I have now asked the House to enable me to pay for another two years—a larger sum than they have got in the past. The Central Administration has had to make larger collections than it had to do in the past—the proof of the pudding lies in its eating—and the actual sums paid to the Provinces—to every Province—are much higher than the collection ever made by the Province itself.

As for East Bengal, they have been getting a large sum but Mr. Nur Ahmed was probably misinformed when he said that in one particular year the East Bengal Government have not received the full allocation of their share. That is not correct. The fact, Sir, is that the East Bengal Government owes the Centre certain money on account of Excise on cloth collected by them and, therefore, as they were not prompt in paying that sum the amount due to them was withheld till the settlement of the account, but to say that the full sum has not been paid to them is not correct.

Then, Mr. Nur Ahmed has also very rightly remarked that the position this Government has taken in the matter of the Sales Tax has been the subject of very favourable comment in financial papers in Bharat who congratulated this Government on their boldness and imagination, so far so that they in Bharat are trying to put a restraint on the powers of the Provinces in the matter of the Sales Tax. So imitation is the best form of flattery ; even Bharat has tried to imitate us in this matter.

Mr. Nur Ahmed quoted something about jute. He was pleased to say that East Bengal receives only 50 per cent. Well, that is not a fact, Sir. If he will kindly go into the case he will find that East Bengal gets much more than that.

Mr. Nur Ahmed also raised the question of the Provinces not being helped in development. Well, I thought Mr. Nur Ahmed was a voracious reader of all Government's documents—good, bad and indifferent (*laughter*)—but it seems that he has not read the Development Plan which was circulated with the Budget, a perusal of which would have shown him how the Central Government has helped the Provinces and

[The Honourable Mr. Ghulam Mohammed]

how it proposes to help them further. But to go on keeping the old practice and raising the old cry without ascertaining the facts is not a thing which I expected from Mr. Nur Ahmed. When he studies these books at leisure, I am sure he will find that the picture is quite different to what he has painted. I would repeat again that the Provinces are not able to spend the grants we give them for development purposes.

Then, Sir, coming to my friend, Moulavi Ebrahim Khan, he referred to certain representations received from certain Associations. Let me inform him that I have received between 5,000 and 7,000 telegrams during the last few months on the question of the Sales Tax. Most of them owe their origin to common authorship!—well, that is part of the game—and, apart from them, I have received representations from about 56 Associations, but, barring two Associations, none have recommended that the Sales Tax should remain a provincial subject. Every one has pleaded for Central Administration and the Sales Tax being Central,—and that is a question which I need not go into at the present stage because it will go before the Committee of the Constitution-making machinery which goes into the question of the allocation of revenues—but, apart from that, even from Bengal there are two bodies—one body says that it should be Central; the other body says it should be provincial—but neither the other organizations of the Bengal nor of Western Pakistan—not a single Association including the Associations which are of an All-Pakistan character—have said that this tax should be provincial or should be provincially administered. Even the Bengal Associations that have pleaded—some of them have pleaded—that the subject should be provincial, have shown a bias in favour of Central administration.

Now, Sir, Mr. Ebrahim Khan said that the administration is harsh. Well, I have had no representation so far from the Associations alleging harshness but I shall certainly, if these things are referred to me, look into the matter and see what should be done to alleviate any suffering in this matter, if it does exist. I might draw the attention of the House to the fact that Government propose to appoint a Committee very shortly to go into the whole question of the Sales Tax, on which representatives of trade shall find suitable and adequate representation. This body will look into the question not only whether the administration is harsh or otherwise but also, what is more important, of the leakages of revenues on the part of the members of these very important bodies to which Mr. Ebrahim Khan has referred. He should wait for this Committee.

Sir, I again commend that this legislation be passed.

Mr. President : The question is :

“That the Bill further to amend the Government of India Act, 1935 (insertion of new Section 140-A and amendment of the Seventh Schedule) be taken into consideration.”

The motion was adopted.

Mr. President : We take up the Bill clause by clause now.

Clause 2 was added to the Bill.

Clause 3 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Mr. Ghulam Mohammed : Sir, I move :

“That the Bill be passed.”

Mr. President : The question is :

“That the Bill be passed.”

The motion was adopted.

Mr. President : The House stands adjourned till 5-30 P.M. on Friday the 31st instant.

The Assembly then adjourned till Half Past Five of the Clock, in the Evening, on Friday, the 31st March, 1950.